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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,564	08/15/2006	Michael Komowski	016906-0509	9060
22428 7590 08/31/2010 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			EXAMINER MILLER, SAMANTHA A	
			ART UNIT 3749	PAPER NUMBER
			MAIL DATE 08/31/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/578,564

Applicant(s)

KOMOWSKI, MICHAEL

Examiner

SAMANTHA A. MILLER

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6 and 10-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6 and 10-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Receipt of applicant's amendment filed on 8/18/2009 is acknowledged.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 13, 17, and 21 state "the third region indirectly adjoins a lateral surface in a region of the externally surrounding rim via the intermediate region" it is unclear what applicant is considering a lateral surface and a region.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by PIERRE (FR 2,771,966).

PIERRE teaches:

1. A circumferential surface (Fig.4) of a part-cylinder, wherein the circumferential surface forms a first region (three surfaces 50, Fig.4), two circle segment surfaces (48 on each side) forming lateral side surfaces of the part-cylinder, wherein each circle segment surface forms a second region (48), an externally surrounding rim (64), which is arranged substantially in two planes (along the edge of 50 and inward, Fig.4), projects outward and serves to bear against correspondingly designed beating surfaces, at least a second rim (around the top and side edges of 48) running along the circumferential surface, the circle segment surfaces, or a combination thereof, at least a second rim (top surface of 48 and side of 48) projecting perpendicularly outward (side rim of 48 projects out from 48 and 50) from running along the circumferential surface, the circle segment surfaces, or a combination thereof, and at least one opening (58 and 52) in at least one segment of the first region, one or both of the second regions, or a combination thereof, wherein the at least one segment is delimited by the externally surrounding rim and the second rim (Fig.4).

2. The second rim is provided in the first region of the drum flap (being between the first and second region).

3. The second rim is provided in the second region (being between the first and second region).

4. The second rim is arranged in a plane in which a pivot axis (from 51) also lies, and projects outward, wherein the plane in which the second rim lies is arranged in an

angle between the two planes (90 degree angle) in which the externally surrounding rim is arranged.

6. A circular region having a thickness designed to match the externally surrounding and second rims, is provided in a region of a pivot axis (Fig.4).

10. Two outwardly protruding bearing journals (51) are provided on a pivot axis.

11. An air guidance housing (Fig.3), and a drum flap (40) arranged in the air guidance housing, wherein the drum flap comprises: a circumferential surface of a part-cylinder, wherein the circumferential surface forms a first region (three surfaces 50, Fig.4), two circle segment surfaces forming lateral side surfaces of the part-cylinder, wherein each circle segment surface forms a second region (48 on each side, Fig.4), an externally surrounding rim (64), which is arranged substantially in two planes (along the edge of 50 and inward, Fig.4), projects outward and serves to bear against correspondingly designed bearing surfaces (Fig.4), at least a second rim (around the top and side edges of 48) running along the circumferential surface, the circle segment surfaces, or a combination thereof, at least a second rim (top surface of 48 and side of 48) projecting perpendicularly outward (side rim of 48 projects out from 48 and 50) from running along the circumferential surface, the circle segment surfaces, or a combination thereof, and at least one opening (58, and 52) in at least one segment of the first region, one or both of the second regions, or a combination thereof, wherein the at least one segment is delimited by the externally surrounding rim and the second rim.

12. The drum flap serves as an air distributor flap and/or as a temperature mixing flap (English Abstract).

Allowable Subject Matter

Claims 13-21 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Response to Arguments

Applicant's arguments with respect to claims 13-21 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 4/28/2010 with regard to claims 1-12 have been fully considered but they are not persuasive.

Applicant contends that PIERRE does not teach an externally extending rim that extends perpendicularly outward from along two edges. However, claims are given the broadest reasonable interpretation. In this case, claim 1 states "an externally surrounding rim, which is arranged substantially in two planes, projects outward and serves to bear against correspondingly designed bearing surfaces". PIERRE teaches a externally surrounding rim (64) that is arranged substantially in two planes (along the edge of 50 and inward, Fig.4) projects outward (from 50) and serves to bear against correspondingly designed bearing surfaces.

Applicant contends that PIERRE does not teach an externally extending rim that extends perpendicularly outward from along two edges. However, claims are given the broadest reasonable interpretation. In this case, claims 1 and 11 states "at least a second rim running along the circumferential surface, the circle segment surfaces, or a

combination thereof, at least a second rim projecting perpendicularly outward from running along the circumferential surface, the circle segment surfaces, or a combination thereof". PIERRE teaches at least a second rim (around the top and side edges of 48) running along the circumferential surface, the circle segment surfaces, or a combination thereof (runs across the circumferential surface and the circle segment surfaces), at least a second rim (top surface of 48 and side of 48) projecting perpendicularly outward (side rim of 48 projects out from 48 and 50 running along the circle segment surfaces) from running along the circumferential surface, the circle segment surfaces, or a combination thereof,

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samantha A. Miller whose telephone number is 571-272 9967. The examiner can normally be reached on Monday - Thursday 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve McAllister can be reached on 571-272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Samantha Miller
Examiner
Art Unit 3749
8/14/2010

/Steven B. McAllister/

Supervisory Patent Examiner, Art Unit 3749